RECENT CASES.

BILLS AND NOTES — FICTITIOUS PAYEE. — The cashier of plaintiff bank drew checks on defendant bank payable to customers of plaintiff. The cashier then indorsed the checks in the names of the customers, which were put into circulation and paid by the defendant. *Held*, these checks were in legal effect no different from checks payable to non-existing persons, because the names used were those of customers of the bank. Plaintiff is liable to defendant for the amount of the checks. *Phillips* v. *Bank*, 35 N. E. Rep. 982 (N. Y.).

The case seems perfectly sound, and is well reasoned. As the court say: "The fictitiousness of the maker's direction to pay does not depend upon the identification of the name of the payee with some existent person, but upon the intention underlying the act of the maker in inserting the name." That is, if the maker intends to use a name in a bill he has drawn to realize money fradulently, he is in effect drawing it payable to himself, and his own indorsement in the assumed name passes good title. This way of working out the rights of the parties seems more satisfactory than the ordinary treatment of such bills as payable to bearer.

BILLS AND NOTES — IMMATERIAL ALTERATIONS. — Purchasers of goods gave in payment therefor a note payable to the plaintiff bank (the respondents), all the parties to the sale going to the bank to get it discounted. To satisfy the bank, the vendor signed his name below those of the makers; but fearing he would be held on it as a maker he afterwards returned to the bank and persuaded the cashier to change the note, so as to make it payable to his order, and then indorsed it and guaranteed it on the back to the bank, erasing his signature from the face of the note. *Held*, that as this alteration did not change the liability of the parties to the note, it was no defence to an action upon it. *Reilly* v. *Trust Nat'l Bank*, 35 N. E. Rep. 1120 (Ill.).

The decision is rather a striking instance of what will be deemed an immaterial alteration. The vendor before the note was changed was an anomalous indorser, and in those States where such an indorser is held to be a joint maker, it is submitted the decision must necessarily be against the plaintiff. In Illinois an anomalous indorser is presumably a guarantor, and there the alteration would not seem to increase the maker's liability. On the general question as to what constitutes an immaterial alteration, see 2 Daniel Negot. Inst. 3 ed. § 1398 to § 1400, 1 Ames Cas. on Bills and Notes, p. 449. For the position of an anomalous indorser in Illinois see 1 Ames Cas. on Bills and Notes, p. 271, note *c*.

CARRIERS. — Action for injunction, by a railway company against defendant, a hackman, to restrain the latter from entering upon the grounds and station of the plaintiff to solicit passengers. *Held*, that section 34, c. 565, Laws of 1890, prohibiting carriers from giving "preference for the transaction of business of a common carrier upon its grounds, etc., to any one of two or more parties competing in the same business, etc.," does not apply to the present case, but only where the competing parties are "under contractual relations" with the carrier; and that the plaintiff has the right to exclude the defendant from its grounds, when he is not under contract with a passenger. *New York Central & H. R. R. Company et al.* v. *Flynn et al.*, 26 N. Y. Sup. 859.

It is difficult to see what force is left to the statute by this construction, but the scope of the decision is clear, to the effect that by common law a carrier may exclude a hackman seeking to enter its grounds for the purpose of soliciting patronage. The same decision is reached in *Railroad Company* v. *Tripp*, 147 Mass. 35, which is cited and approved by the New York court. The true view of this question seems to be based upon the reasonableness of such a regulation made by a carrier, in the light of the carrier's duty to the public to furnish ready means of access to its stations, and to facilitate the arrival and departure of its passengers and their baggage. The weight of authority appears to look with disfavor upon excluding certain hackmen and favoring others, as tending to inconvenience passengers and to create a monopoly resulting in increased hack-fares, etc. *Railroad* v. *Langlois*, 9 Mont. 419; *Hack & Bus Company* v. *Sootsma*, 84 Mich. 194; *Cravens* v. *Rodgers*, 101 Mo. 247; *McConnell* v. *Pedigo et al.*, 18 S. W. Rep. (Ky.) 15; *Steamboat Company* v. *Transportation Company*, 10 So. Rep. (Fla.) 480.

CONSTITUTIONAL LAW — ACT EXCLUDING CHINESE. — *Held*, that an Act attempting to prohibit Chinese from coming into the State is in conflict with that clause of the United States Constitution giving the general government authority to regulate commerce with foreign nations. *Ex parte Ah Cue*, 35 Pac. Rep. 556 (Cal.).

This case decides correctly, it seems, a very interesting point. The court treat the question as too clear for extended argument.

CONSTITUTIONAL LAW — CORPORATIONS. — *Held*, that an Act imposing on a railroad corporation absolute liability for fires communicated by locomotive engines is not unconstitutional. *Mathews* v. *St. Louis & S. F. Ry. Co.*, 24 S. W. Rep. 591 (Mo.).

A former case in Missouri held that it was a constitutional provision to impose absolute liability on a railroad for all cattle killed. That decision would seem to require the present result because the fires in the engines are much more under the control of the company than are cattle in the fields along the line.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — UNREASONABLE CHARGES BY CARRIERS. — Plaintiffs brought suit in a State court against defendant, a common carrier, for charging unreasonable rates for transporting plaintiffs' beef to other States. The suit was removed to the United States District Court by virtue of the citizenship of the parties. *Held*, by Grosscup, Dist. J., that the suit could not be maintained. Plaintiffs could not avail themselves of the Interstate Commerce Act in a suit brought originally in a State court; and the common law of the State could not be applied, because charges for interstate carriage are a subject of interstate commerce requiring uniform regulation, and must be regulated exclusively by the law of the United States. *Swift et al.* v. *Philadelphia & R. R. Co.*, 58 Fed. Rep. 858.

For comment see p. 488, *ante*.

CONSTITUTIONAL LAW — STATE CONSTITUTION — PROPERTY QUALIFICATION FOR OFFICE-HOLDERS. — Section 4 of Article 4 of the Constitution of West Virginia provides that "no person except citizens entitled to vote, shall be elected or appointed to any State, county, or municipal office; but the governor and judges must have attained the age of thirty, and the attorney-general the age of twenty-five years, at the beginning of their respective terms of service; and must have been citizens of the State for five years next preceding their appointment." Section 5 of the same article after prescribing a certain oath for office-holders continues: "And no other oath, declaration, or test shall be required as a qualification unless herein otherwise provided." Section 8 of the same article provides that "the legislature shall prescribe by general laws the terms of office, powers, duties, and compensation of all public officers and agents, and the manner in which they shall be elected, appointed, and removed." *Held*, that these clauses do not restrain the legislature from prescribing further qualifications for office-holders in addition to those which they themselves contain; and that an Act of legislature requiring all members of municipal councils to be freeholders is constitutional. Brannon, J., dissenting. *State* v. *McAllister*, 18 S. E. Rep. 770 (W. Va.).

This decision is in accord with what little authority there is on the subject. The cases relied on by the majority of the court in their construction of section 4 may be distinguished, as the dissenting judge points out, by the fact that the clauses there construed stop with the general provision that none but voters shall be office-holders, and do not contain any special qualifications for particular offices. But in view of the sound principle, which is the one applied by the majority of the court in the principal case, that State constitutions are to be construed as limitations and not as grants, it is clear that the section only forbids the legislature to expand the class from which offices are to be filled beyond the given limits, and leaves it free to contract that class at will.

CONTRACTS — YEARLY HIRING. — Plaintiff was appointed janitor of a school building in September, 1878, by a resolution of defendant board of education. Resolutions of re-employment were passed in some years, and in others defendant was continued in his position without any resolution, until 1888, when plaintiff began his work in September, no resolution of re-employment having been passed. In October, defendants engaged another man as janitor. It was admitted that plaintiff had discharged his duties faithfully. *Held*, that plaintiff was hired by the year and could maintain an action for breach of contract. *Laughlin* v. *School District*, 57 N. W. Rep. 571 (Mich.).

It seems to be assumed that plaintiff was not a public officer and that this was a private contract. On that assumption the case is undoubtedly correct. *Beeston* v. *Collyer*, 4 Bing. 309; *Williams* v. *Byrne*, 7 Adol. & Ellis, 177; *Sines* v. *Superintendents*, 58 Mich. 503. But if plaintiff was a public officer, employed by the board under an ordinance, the decision might be otherwise. By defendants' failure to hold an election in September, plaintiff would hold over. But his holding over would not cause the board to lose their right to elect another janitor subsequent to September. See Dillon on Mun. Corp., 4th ed., vol. 2, sect. 839, note 1.

CORPORATIONS — ASSIGNMENT FOR THE BENEFIT OF CREDITORS BY A FOREIGN CORPORATION. — A New Jersey corporation, doing business in New York, becoming insolvent, made an assignment of all its property to the predecessors of the plaintiff for the benefit of all its creditors pro rata. Subsequently, personal property in New

York, belonging to the said corporation, was attached at the suit of a New York creditor, and the plaintiff brought trover against the attaching sheriff. The sheriff set up the laws of 1890, chap. 564, § 48, which provided that an assignment by an insolvent corporation shall be void. *Held*, that the statute applied to domestic corporations only, and as the assignment was valid by the law of New Jersey, where the corporation was domiciled, it is valid in New York as regards the personal property in question. *Vanderpoel* v. *Gorman*, 35 N. E. R. 932 (N. J.).

CORPORATIONS — POWER OF FOREIGN CORPORATION TO DEAL IN DOMESTIC REAL ESTATE. — *Held*, by the Court of Appeals of New York, that a foreign corporation chartered for the purpose of buying and selling real estate can give good title to land purchased by it in New York. *Lancaster* v. *Amsterdam Co.*, 35 N. E. Rep. 964 (N. Y.).

The court put their decision on the broad ground that it is not the policy of their State, so far as can be seen from its legislation, to restrict foreign corporations dealing in real estate any more than those engaged in other business. The courts of Illinois hold that it is the policy of their State to keep land out of the hands of corporations, and their decisions are contra to the decision of the principal case.

CRIMINAL LAW — JURISDICTION. — A statute of South Carolina made it an indictable offence to "administer to any woman with child, or prescribe or procure for any such woman . . . any medicine . . . with intent thereby to cause or procure the miscarriage or abortion of any such woman." *Held*, under this statute the courts of South Carolina have jurisdiction over the defendant who bought drugs in another State and sent them to a woman living in South Carolina with intent to procure an abortion. *State* v. *Morrow*, 18 S. E. Rep. 853 (So. Car.).

The decision seems correct. It is like the case of a man's standing in one jurisdiction and shooting at and killing a man in another jurisdiction. In both the supposed case and the principal case, the offence was committed where the act took effect, and courts of that jurisdiction should have power to punish. The authorities on this subject, which are somewhat scanty, are collected in 1 Bishop, Crim. Law, 8th ed. § 110. For a case of shooting, see 7 HARV. LAW REV. 239.

EQUITY JURISDICTION — CONTROL OF PROPERTY PENDING INQUISITION OF LUNACY. — *Held*, that the Court of Chancery of Delaware, by special legislative grant, has jurisdiction of alleged lunatics from the very inception of the process by which their sanity or insanity is definitely ascertained, and has the power to suspend or supersede the control of the supposed insane person over his property *ad interim*. *In re Harris*, 28 Atl. Rep. 329 (Del.).

In England the Court of Chancery has no jurisdiction, strictly speaking, over the persons or property of non-adjudged lunatics, as such, and the chancellor of England only has jurisdiction of that class of persons as the representative of the king, as *parens patriæ*, by means of his sign manual. See *In re Heli*, 3 Atk. 634. So the Court of Chancery in Delaware does not possess this special authority as a part of its inherent, original, equitable jurisdiction, but derives it from the Legislature, as the chancellor of England derived it from the king.

EQUITY JURISDICTION — RIGHT TO PRIVACY — PICTURE IN NEWSPAPER. — An injunction will lie against the publication of a picture of the plaintiff in the defendant's newspaper, with an invitation to readers of the paper to vote on the question of the popularity of the plaintiff as compared with another person, whose picture is also published in such paper. *Marks* v. *Joffa*, 26 N. Y. Supp. 908.

This question is discussed in 4 HARV. LAW REV. 193, in an article by Messrs. Warren and Brandeis, referred to by the court in its opinion.

EVIDENCE — COMPARISON OF HAND-WRITINGS. — *Held*, a writing specially prepared for the purpose of comparison is inadmissible on a question of genuineness. *Hickory* v. *United States*, 14 Supr. Ct. Rep. 334.

The result seems sound on any view. The common-law view in England and many of the States was that if the paper was properly in evidence for some other purpose, a comparison between that and the contested paper could be made; otherwise, not. This has been changed by statute in England, and the opposite rule laid down by the courts in many States, — namely, that a paper may be put in evidence for the sole purpose of comparison. The Supreme Court decided, in *Moore* v. *United States*, 91 U. S. 271, that the common-law English view obtained in that court, but they treat this as a separate question. It is submitted that courts holding either of the above views could reach this conclusion; for it would be very absurd for courts holding that no paper not properly in evidence for some other purpose could be the subject of comparison to lay down the rule that one especially prepared could be so used. On the other hand, courts holding the opposite view might well say that such a paper could not be used

in this manner with fairness, because the very fact that it had been prepared for the sole purpose of showing that the other contested paper was a forgery, would exclude it from the category of fair specimens. It is difficult to see why the same result might not have been reached by considering simply the general rule, without dealing with the question as one not coming under it. For a discussion of the general rule and the result reached in various States, see Rogers on Expert Testimony, §§ 130, 131.

EVIDENCE — PAROL EVIDENCE — CONSTRUCTION OF DEED. — W owned two adjoining surveys, one called a "Bounty," and the other a "Headright." He conveyed the bounty to C, who executed a deed to plaintiff's grantor, containing the following description: "The undivided half of 1,280 acres of land situated in the southeast part of Falls County, on the waters of Big Creek, being the headright of W, and reference being hereby made to the patent of said W for the boundaries of said tract of land." This description applied perfectly to the headright; and with the exception of the word "headright" it applied equally well to the bounty. *Held*, that the title to the bounty could pass by this deed, for there was a latent ambiguity, and parol evidence was admissible to explain it. Key, J., dissenting. *Minor* v. *Powers*, 24 S. W. Rep. 710 (Tex.).

The majority of the court follow *Patch* v. *White*, 117 U. S. 213. The dissenting judge distinguishes that case on the ground that the description in that case did not exactly fit either lot. The opinion of this dissenting judge brings out neatly the real nature of the question before the court. Even he, who applies the so-called rule of evidence the most strictly, admits that the facts actually offered could be considered if they had one more fact to go with them, namely, that C was ignorant of the existence of the headright, and then the title to the bounty would pass under the deed. But if there were any rule of evidence excluding the facts offered, it must apply when they are offered with the additional fact, as well as when they are offered alone. The question, then, which the court passed on was not whether the facts could be considered, but whether on being considered they showed that C's deed was made for a description of the bounty. It is submitted that this is the proper question in all these cases, and that the decisions should only differ according as the courts think the facts offered — leaving out, of course, the grantor's declaration of his intention — prove that the description was made for the lot claimed or not. It is further to be noticed that the decision in this case is incompatible with any such rule as is suggested by the opinion of Chief Justice Shaw, in *Tucker* v. *Seaman's Aid Society*, 7 Met. 188, to the effect that when there is something which exactly fits the description in the instrument the investment can pass title to nothing else.

EVIDENCE — PRIVILEGED COMMUNICATIONS — WAIVER OF PRIVILEGE. — Defendant was tried for perjury. Letters written to him by his wife, and given by him to his mistress, who in turn gave them to the district attorney, were offered in evidence by the State. Defendant objected on the ground that they were privileged, as confidential communications from a wife to her husband. *Held*, that when the husband made the letter public by giving it to another, the confidential character of the communication was destroyed, and it may be put in evidence if otherwise admissible. *People* v. *Hayes*, 35 N. E. Rep. 951 (N. Y.).

The decision is sound. It is analogous to the cases where confidential communications which have been overheard by third parties may be testified to by such parties. 1 Greenlf. Ev. § 254, n. (*a*); Chamb.'s Best on Ev., c. 9, 535 (*e*).

EVIDENCE — RES GESTÆ. — Deceased, after being shot, ran out of the room, and meeting in the hallway his wife, who was coming to his assistance, made certain declarations as to who had shot him. *Held*, that the declarations were not part of the *res gestæ*, and were therefore inadmissible. *Parker* v. *State*, 35 N. E. Rep. 1105 (Ind.).

This case unnecessarily restricts the *res gestæ* exception to the hearsay rule. It is much like *Regina* v. *Bedingfield*, 14 Cox C. C. 341, a case which is generally discredited. The evidence should be admissible if the declarations were in a fair sense contemporaneous with the transaction, which is the subject of proof for the state of mind excited by the transaction, and the vivid realization of the circumstances must be supposed to continue for a short time and not to end abruptly with the event itself. The court appear to recognize this rule when they say that the transaction must not be so far past that the declarations amount to a narration, but they do not apply it correctly to the facts of the case, and are not supported by the current of authorities.

HUSBAND AND WIFE — TIME OF DISAFFIRMANCE OF DEED BY AN INFANT WIFE. — A statute removed coverture as a disability to an avoidance of conveyances of land in which an infant wife has joined with her husband. *Held*, the interest in dower is

inchoate until the death of the husband, and not until then does a right of action accrue to enforce it. So, notwithstanding the statute, the wife need not disaffirm within a reasonable time after reaching majority, but only after right to dower has accrued. *McClanahan* v. *Williams*, 35 N. E. Rep. 897 (Ind.).

It is submitted that the decision is wrong. If a wife, who is an infant, has an inchoate right of dower which she can grant before any right of action to enforce it has accrued, why is it not, in the absence of the disability of coverture, a right which can be disaffirmed upon reaching majority?

INSURANCE — DELIVERY OF POLICY — AUTHORITY OF AGENT. — M, an agent for a number of insurance companies, was instructed by the plaintiff to keep the insurance on his property up to a certain amount in reliable companies. Under this arrangement, M and the plaintiff had settlements, usually every month, when the premiums would be paid. One company having directed M to reduce its risk with the plaintiff, M, as a substitute, made out a policy for the plaintiff in the defendant company, which he notified. The old policy had been deposited by the plaintiff in a bank as security, and M went there several times to make an exchange with the board by giving up the policy in the defendant company in return for the one that had been cancelled. But as the cashier, who had the custody of the policy, happened to be out each time M called, no exchange was made; though afterwards, meeting the cashier out of hours, he informed him of what he had done, and the cashier assented to the exchange. Before it was made, however, or the premium on the policy paid, the property was destroyed by fire. *Held*, that the company was liable, as M was the mere custodian of the policy for the plaintiff; and that as general agent of the defendant, M had authority to waive the payment of the premium, which the customary monthly settlement showed was the case. *Newark Machine Co.* v. *Keaton Ins. Co.*, 35 N. E. Rep. 1060 (Ohio).

For a discussion of the principles on which this case is decided, see 1 May on Insurance, § 56.

MUNICIPAL CORPORATIONS — LIABILITY FOR TORT. — The city of Tacoma, having power to improve parks, and to regulate the use thereof, was licensed by the owner of land to occupy it as a park. By the negligence of the officers engaged in improving the park, the plaintiff was injured. *Held*, that he could not recover against the city. *Russell* v. *City of Tacoma*, 35 Pac. Rep. 605 (Wash.).

This case makes the correct distinction between the actions of the city which are for the public benefit and those which are for the corporate benefit, a distinction which the New York court failed to make in *Speir* v. *City of Brooklyn*, 34 N. E. Rep. 727. See 7 HARV. LAW REV. 240.

PARTNERSHIP — ASSUMPTION OF DEBTS BY NEW FIRM — SURETYSHIP. — A partner gave notice to a firm creditor of his retirement from the firm and of the fact that the new firm had assumed the debts of the old one. Subsequently the creditor gave an extension to the new firm without the consent of the retiring partner. *Held*, that by the arrangement the new firm and the retiring partner assumed the positions of principal and surety, and that an extension to the principal released the surety. *Hall* v. *Johnston*, 24 S. W. Rep. 861 (Texas).

As between themselves, the retiring partner and the new firm became surety and principal, and notice to the creditor made it inequitable for him to treat them in any other way, as his substantial rights were not thereby affected.

REAL PROPERTY — COVENANTS FOR TITLE — DEFECT OF TITLE APPEARING IN THE CONVEYANCE. — A agreed with a railway company for the sale to them, in fee, of land to which she derived her title under the will of X; and on the construction of that will depended her ability to make a good title. The sale was completed by a deed which fully recited the will of X, and purported to convey the land in fee, and in which A entered into the usual covenants for title. *Held*, in an action upon the covenants, that they extend to defects of title apparent upon the face of the deed, as contained in the will there recited. The deed purported to convey an unincumbered fee-simple, and a vendor's covenant extends to the title expressed to be conveyed to the vendee. *Page* v. *Midland Railway Company*, [1894], 1 Chan. 11.

This decision is a most satisfactory one, overruling *Hunt* v. *White*, 37 L. J. (Ch.) 326; and opposes the principle laid down in a recent Massachusetts case criticised in a note in 7 HARV. LAW REV., 429. In that case, a second mortgage purported to convey a fee, subject to the prior mortgage and to a certain right of drainage, and contained covenants for title, subject to the right of drainage. *Held*, that the covenant extends to the first mortgage, and thus in effect insures against an incumbrance subject to which the conveyance is expressly made. The two cases are broadly distinguished

on the ground that in the one a fee-simple is purported to be conveyed, and in the other a fee-simple subject to the prior mortgage. *Ayer* v. *Philadelphia and Boston Face Brick Company*, 157 Mass. 57; 159 Mass. 84.

REAL PROPERTY — COVENANT RUNNING WITH THE LAND. — A mill company owning land on a stream desired to dam the stream to form a mill-pond. They agreed with the town that they would build a new bridge over the stream and also new highway approaches thereto, and that they would keep the same in repair. Defendants were successors in title to the mill company and refused to repair the highway, whereupon plaintiff repaired it and brings an action for money paid. *Held*, (overruling a demurrer to the declaration) that such a covenant may run with the land so as to bind the covenantor's successors in title. *Inhabitants of Middlefield* v. *Church Mills Co.*, 35 N. E. Rep. 780 (Mass.).

The opinion in this case might have been more satisfactory. Judge Holmes says: "It is true that in general active duties cannot be attached to land. But there are some exceptions, and most conspicuous among them is the obligation to repair fences and highways." And again "we do not deem it advisable to discuss the law in detail until the facts shall appear more exactly than they do at present." It is submitted that this decision is open to criticism. The general rule is that the burden of a covenant will not run with the land; to this there are, it is true, several exceptions; but in all the cases where the burden of a covenant has run with the land, there has been some connection, "some privity of estate," between the parties to the covenant. In the principal case, no land was granted of which this highway was a part, and to which the covenant might be annexed; in fact, no interest would seem to exist other than a personal interest between the plaintiff, covenantee and the original covenantor. From the facts of the case it does not even appear that the defendants were abutters on this highway. Tiedeman on Real Prop. (2d ed.) § 862, n. 5; 2 Washburn on Real Prop. (4th ed.) 286–7; 1 Smith's Leading Cases (9th Am. ed.), Notes to Spencer's case.

REAL PROPERTY — LEASE — FORFEITURE. — A made a lease to B, with C as surety. In the lease was a clause providing that if any of the covenants of the lessee were not performed, the lessor should have a right of re-entry, "without such re-entry working a forfeiture," and the covenants were to be performed as to payment of rent, although there was a re-entry. Covenants were broken. A re-entered, and now sues C on the contract of suretyship. *Held*, A can recover the money covenanted to be paid, — not as rent, but as damages. *Grommes* v. *St. Paul Trust Co.*, 35 N. E. Rep. 820 (Ill.).

The case is undoubtedly correct, and is interesting as showing the ingenuity of the attorney who drew the lease. The lessee by his own act has ended the estate, or justified the lessor in so ending it; but he and his surety are liable on the contract to pay the amount stipulated as damages.

REAL PROPERTY — LEASE — SURRENDER BY OPERATION OF LAW. — Defendant leased of Hance, plaintiff's agent, office rooms for three years, and was prohibited by the terms of the lease from assigning or sub-letting. Defendant informed Hance that he was going to vacate and would get another tenant. Hance said that he had a scheme of renting the rooms, and objected to defendant's procuring a tenant. This was March 20, and a few days later defendant gave Hance the key, having moved out. Hance made negotiations with various parties for renting the rooms, but did not succeed, and put a sign "Rooms to Rent" in the window June 1. He demanded rent of defendant some time in April. *Held*, this was not a surrender by operation of law. *Stern* v. *Thayer*, 57 N. W. Rep. 329 (Minn.).

This is a very close case, yet it seems rightly decided. The facts were, on the construction of the court, that though Hance attempted to rent the premises again, he informed the defendant that he was responsible in case he could not rent, or if he was forced to rent for a smaller amount. This is precisely like the case of *Auer* v. *Penn*, 99 Pa. St. 370. The closeness of the case depends on the construction of the court as to the facts.

REAL PROPERTY — PARTY WALLS. — Motion for the dissolution of an injunction forbidding the defendent to tear down a party wall, in order to erect one better suited to his requirements. The wall was situated on the dividing line between the land of the plaintiff and that of the defendant, and had been used by them for more than twenty years. *Held*, that the injunction must be dissolved. Either adjoining owner had the right to repair a party wall, or to tear it down to rebuild it; but must, in so doing, cause his neighbor as little inconvenience as practicable, and reimburse him for expenses necessarily incurred in protecting his property. *Putzell* v. *Drovers' and Merchants' Nat. Bank*, 28 Atl. Rep. 276 (Md.).

In the above case the court make no distinction between party walls owned in common and those which are divided by the boundary line between the adjoining premises into two strips, each belonging to the person upon whose land it stands, and having an easement against the other strip for its support. The decision is in accordance with authority both in England and in the United States. "As I have read the law from the statements of eminent judges, he [the tenant in common] has a right to pull down when the wall is neither defective nor out of repair, if he only wishes to improve it, or to put up a better or handsomer one." Sir George Jessel, in *Banks* v. *Stokes*, 9 Ch. Div. 72.

REAL PROPERTY — RESTRICTION AS TO USE OF PREMISES. — Part of the consideration in a deed of land was that the property should not be used for the sale of liquor. There was also a condition that if the prohibitory clause was violated, then the land was to revert to the grantor. The original grantee sold to defendant, who broke the condition. *Held*, the land is forfeited to the original grantor, though "heirs and assigns" is not mentioned in the deed. *Odessa Imp. Co.* v. *Dawson*, 24 S. W. Rep. 576 (Tex.).

This is an extension of the doctrine laid down in 66 Tex. 465. It is submitted that it is a sensible one. The defendant is chargeable with notice of the contents of the deed containing the condition. The condition applies to the lot itself, and not to the grantee, in terms. The condition was part of the consideration, and the vendor presumably received a smaller price than he would otherwise have taken. There seems to be no good reason for defeating the expressed intention of the parties when the purchaser has taken with notice of the restriction, as here. *Hodge* v. *Sloan*, 107 N. Y. 244, and *Upington* v. *Corrigan*, 36 Hun, 320, favor this view. In *Fuller* v. *Arms*, 45 Vt. 400, the court say, under somewhat similar circumstances, that all that passed to the grantee was the use of the land so restricted, and that the grantee could convey no more than he had. *Carter* v. *Williams*, L. R. 9 Eq. 678, tends to support the principal case. But see *Wilson* v. *Hart*, L. R. 1 Ch. App. 463.

REAL PROPERTY — WILLS — ATTESTATION BY HUSBAND OF LEGATEE. — *Held*, that a statute making void a legacy to an attesting witness, does not apply to a legacy to the husband or wife of such witness, as there is not enough unity of interest between husband and wife to create in one a present direct or certain interest in a legacy to the other. *In re Holt's Will*, 57 N. W. Rep. 219 (Minn.).

Under similar statutes, Massachusetts has the same rule, based, however, upon the ambiguous and unsatisfactory authority of *Hatfield* v. *Thorpe*, 5 B. & Ald. 589; *Sullivan* v. *Sullivan*, 106 Mass. 474. The contrary decision, having for its foundation the consideration of the difficulty sought to be avoided by the statute, is to be preferred, and is law in Maine and New York. *Winslow* v. *Kimball*, 25 Me. 493; *Jackson* v. *Wood*, 1 Johns. Cas. 163; and *Jackson* v. *Durland*, 2 ibid. 314 (N. Y.).

STATUTE — HAWKERS AND PEDDLERS, WHO ARE. — *Held*, a person who sells stoves by sample is not a peddler within the meaning of a statute imposing a tax on "every itinerant person or company peddling stoves." *State* v. *Lee*, 18 S. E. Rep. 713 (N. C.).

The decision is clearly correct, and is in accord with the weight of authority. See note in 57 Am. Rep. 136. A peddler is one who carries with him the whole or a large part of his stock in trade, and not one who sells by sample. But see *Graffty* v. *City of Rushville*, 107 Ind. 502. Two recent cases in accord with the principal case are *Village of Stamford* v. *Fisher*, 35 N. E. Rep. 500 (N. Y.), and *Hewson* v. *Inhabitants of Englewood*, 27 Atl. Rep. 904. See note to the latter case in Green Bag, vol. 6, p. 96. In *Machine Co.* v. *Gage*, 100 U. S. 676, such a tax was held to be constitutional.

TORTS — ACTIONABLE NUISANCE. — A rented property to B for the sale of liquor. The property was in a neighborhood where there were no saloons, but churches, schools, and quiet and orderly inhabitants. B had a license under the statute of the State to sell liquor. Plaintiffs brought this action against A and B for a nuisance, because a saloon next them had greatly lessened the rental value of their house, and was offensive to them. *Held*, though the sale was under legislative sanction it created a nuisance, and a private person who is injured can maintain an action against both A and B. The license simply freed them of liability to the State.

Howard, C. J., and Hackney, J., dissented on the ground that a business made lawful by the statutes of the State is not, when properly conducted, actionable as a nuisance. *Haggart* v. *Stehlin*, 35 N. E. Rep. 997 (Ind.). For a discussion of this case, see the Notes.

TORT — CONSPIRACY — COMBINATION OF EMPLOYERS. — Defendants were members of different firms of builders and furnishers of building materials. The employees in the building trades struck for a reduction in hours of work per day, but demanded

that the former wages be continued. To resist this demand defendants and other firms united in an agreement to refuse to supply building materials to any firm which should accede to the demands of the employees. Plaintiff refused to join with the defendants, and undertook to continue sales of building material to those builders who had conceded the eight-hour day. Defendants tried to prevent him from so doing by persuading lumber dealers and others from supplying him with the necessary materials. Plaintiff brings this suit averring an unlawful and successful conspiracy to injure him in his business. *Held*, (1) A combination of employers formed to resist an artificial advance in wages demanded by a combination of employees is lawful. (2) The methods used by defendants in this case do not amount to unlawful coercion. *Cote* v. *Murphy et al.*, 28 Atl. Rep. 190 (Penn.).

By the common law of Pennsylvania, a combination of employees to secure an advance in wages, was a conspiracy, but by legislative enactment it was subsequently declared lawful. Plaintiff claims that as these statutes do not embrace employers, a combination, such as the one in this case, is by the common law a conspiracy. The court, in an able opinion, draws the distinction between a combination of employers formed to reduce wages and one formed to resist an advance demanded. The element of an unlawful combination to restrain trade because of greed of profit to themselves or of malice towards plaintiff or others is lacking, and this is the essential element of common-law conspiracy in this class of cases. See *Com.* v. *Hunt*, 4 Metc. 111; *Bowen* v. *Matheson*, 14 Allen, 499; *Bohn Manuf. Co.* v. *Hollis*, 55 N. W. Rep. 1119; *Mogul S. S. Co.* v. *McGregor*, [1892] App. Cas. 25.

TORT — ABSOLUTE LIABILITY — INJURY TO PROPERTY BY WATER. — Defendants used in their brewery a large quantity of water for cooling beer and other purposes. This water after use was conveyed by a sewer box, built by defendants, down a street to a trough built by the city authorities. From this trough the water was discharged upon plaintiff's land. *Held*, that defendants were liable for the injury thereby occasioned. *Baltimore Breweries Co.* v. *Ranstead*, 28 Atl. Rep. 273 (Md.).

The defendant contended, in this case, that it was not liable unless the quantity of water so discharged was unreasonable and excessive. The court deny this, and say that "the principles laid down in *Fletcher* v. *Rylands*, L. R. 3 H. L. 330, are conclusive as to defendant's intention, the question being, not whether the quantity of water was excessive or unreasonable, but whether it did in fact come upon plaintiff's lot." In this country, there is much difference of opinion as to the soundness of the English rule, which the Supreme Court of Maryland follow in the principal case.

TRUSTS — FAILURE OF EXECUTOR TO CREATE TRUSTS ACCORDING TO THE WILL. — A testator left his estate to his executor in trust with a request that his own investments be continued so long as not detrimental to the estate. The income was to be applied to the use of the widow during her life. Upon her death the executor was to form four trust funds of $20,000 each for the testator's four daughters and pay over the residue to his two sons. The executor had the option of paying the trust legacies for the daughters in money, and then investing it, or setting apart securities out of the estate of equal value. The widow received the income of the estate during her life, but on her death the executor did not form the four trust funds but kept the estate *in solido*, paying to each daughter the interest on $20,000, and to the sons the balance of the income. Between his death and the death of the widow the estate greatly increased in value. The sons claimed the residue of the estate after deducting $80,000 for the four daughters. *Held*, the sons could not take the entire increase, but each daughter must be allowed to participate in it in the proportion her share of $20,000 bore to the value of the entire estate at the death of the widow. *Monson* v. *N. Y. Trust Co.*, 35 N. E. Rep. 945 (N. Y.). For a discussion of this case, see the Notes.

TRUSTS — POWER OF LEGISLATURE TO AUTHORIZE SALE BY TRUSTEES. — A testator devised his house to a church for a parsonage. In course of time the surroundings of the house became such that the intended use as a parsonage could not well be made. The General Assembly thereupon passed an act authorizing the church to sell the devised premises and invest the proceeds in a house lot more eligibly situated for a parsonage, to be held by the church upon the same trusts as the devised estate. *Held*, that such act is constitutional. *In re Van Horne*, 28 Atl. Rep. 341 (R. I.).

The decisions cited by the court, especially those in the cases of *Sohier* v. *Hospital*, 3 Cush. 483, and *Clarke* v. *Hayes*, 9 Gray, 426, are conclusive of the correctness of its opinion.